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THE ITEM VETO

By

Frank C. Jones

Commander, USN

For

Doctor A. Rex Johnson

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INTRODUCTION

Recent emphasis on improvements to the federal budgetary process have resulted from a realization that although the Budget and Accounting Act of 1921 and subsequent ancillary legislation have been great steps forward in proper administration of public funds, much remains to be done, both in the budgetary field and in that of the associated legislative processes. One change that has been suggested, and for which legislation has been proposed, is that of conferring on the Chief Executive the power of the line item veto in appropriation bills. An examination of the suggestion raises at once such questions as: whence came the idea; what has been experience with its use in state government; could it be introduced by statutory action or would a Constitutional Amendment be needed; should it be made at all an integral part of further budget reform?

Such questions are important. There is a dearth of published studies in the state legislative and budgetary processes, yet it is only from state government that we can obtain any performance data, somewhat non-applicable though it is. When there is published material, it usually deals with narrow segments or phases of the legislative process in a particular state, or a selected group of states, rather than throughout all states.[1] Although there has been some study of the question of the item veto in the states, and reviews

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[1]Oliver Douglas Weeks, Research in the American State Legislative Process, (Ann Arbor, Michigan: J. W. Edwards, 1947), pp. 4-6. Written under the auspices of the Committee on Public Administration of Social Science Research Council.

[illegible]

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of its use, there is limited extension of that information to federal government application. And attempts to introduce the item veto into the federal government make vague, general references to state use, but little more.

In 1941 the Social Science Research Council, in an outline of suggested research topics in budgetary matters, included the item veto. The Council puts its questions thus:

> When the Chief Executive possesses the power to veto particular items in an appropriation measure, is the power much exercised? How influential is the threat of using such power? Can the legislature avoid the exercise of the item veto by combining an appropriation for a purpose that the chief executive does not favor with a purpose that he favors? Is the power of the item veto ever exercised when the legislature cannot increase the chief executive's budget request?[2]

The following chapters explore the foregoing questions. The study logically divides itself into two main parts: the item veto in state government, and the item veto in federal government. But an attempt will be made in a third division of the study to show something of the relationship between the two.

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[2]Committee on Public Administration of the Social Science Research Council, Research in Public Budget Administration, (New York; 1941: reproduced from typewritten copy by the Council), p. 22.

PART I

THE ITEM VETO

in the

STATE GOVERNMENTS

CHAPTER I

ORIGIN

The power of the Chief Executive to disapprove the action of the Legislative branch of a government, state or national, is called the veto. The veto may take many forms; it may be absolute, with no power given the Legislative branch to overrule the disapproval; it may be conditional, with the power of the Legislative branch, by a stated proportion such as a majority or two-thirds vote to overrule the disapproval; it may be partial, with the Chief Executive given the power to approve some parts of the action while disapproving the rest. This last type of veto is called the line item veto, or simply the item veto. Before proceeding with the study which forms the subject of this paper, it seems appropriate to review the introduction of the veto power into state and national government; for the item veto entered the political science field only in the last hundred years of United States history.

Prior to the Revolutionary War the various colonies were governed by colonial governors. They had many powers which made them all but dictators over the citizens. One of these powers consisted of the absolute veto. This veto was used, in the opinion of the citizens, in an arbitrary and unjust fashion, and was one of the major complaints of the framers of the Declaration of Independence.

> The royal veto. . . . was not used unsparingly in the early colonial period. For example, a single order of the queen's ministers in 1706 disallowed fifty Pennsylvania laws. Of course, some of the colonial acts were vetoed because they were in conflict with acts of Parliament

CHAPTER I

INTRODUCTION

> or with the common law. Others were vetoed because they were inimical to British economic interests.[1]

The distaste and fear of executive tyranny carried over into early state constitutions. As might be expected, fear led to overcompensation.

> Reaction seldom follows a middle course, and in this case [of power of the governor] the pendulum swung to the other extreme . . . Remembering the effective check which the colonial governor had interposed upon popular measures by means of the veto, the constituent bodies of this period [c. 1787], in all but three states, removed the veto altogether. In Massachusetts the governor was allowed a qualified veto. The first New York constitution provided [a system whereby] the governor could exercise a veto.. . . South Carolina also gave the veto to the governor, but later took it away again.. . . But by the end of the century a qualified veto was reintroduced in four states.[2]

Indeed, with the fear amounting to a psychosis it is remarkable that the federal constitution contained the veto at all, and that the veto was introduced into the state constitutions as soon as it was. During the Constitutional Convention the term "veto" was carefully avoided, and the substitute phrase "qualified negative" took its place; the term continued in use for more than a hundred years, and is found in various veto messages of the Presidents, as for example in one of Rutherford B. Hayes in 1879.[3] The framers of the Constitution were foresighted enough to realize that lack of an executive veto would be a serious defect in the legislative process, and would omit a necessary check on the power of the Legislative branch. The states came, sooner or later, to the same conclusion, and with one exception all states

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[1]Cullen B. Gosnell and Lynnwood M. Holland, State and Local Government in the United States,(New York: Prentice-Hall, Inc., 1951), pp. 307-308.

[2]Margaret Charlotte Alexander (née Marsh), The Development of the Power of the State Executive, "Smith College Studies in History," Vol. II, No. 3; (Northampton, Mass.: Smith College, 1917), pp. 157-161.

[3]James D. Richardson, Messages and Papers of the Presidents, 1789-1897, (10 Vols.); (Washington, D. C.: Government Printing Office, 1896-99), VII, 531.

have now incorporated the veto into their constitutions.[4]

The item veto is, very simply, the extension of the veto power to include the right to veto a single item within a bill, rather than to veto the entire bill. Such a veto was never envisaged by the representatives attending the Constitutional Convention, or if it was, it was never mentioned.[5] The proposal was first introduced into the Constitution of the Confederate States of America, for reasons best explained by Robert H. Smith, one of the framers of that constitution, in an address delivered at Temperance Hall, Mobile, Alabama, 30 March 1861. He stated:

> Save . . . (changes which the urgent necessity of the occasion demanded) we have followed with almost literal fidelity the Constitution of the United States, and departed from its text only so far as experience had clearly proven that additional checks were required for the preservation of the Nation's interest. Of this character is the power given the President to arrest corrupt or illegitimate expenditures, by vetoing particular clauses in an appropriation bill, and at the same time approving other parts of the bill. There is hardly a more flagrant abuse of it's [sic] power, by the Congress of the United States than the habitual practice of loading bills, which are necessary for governmental operations with reprehensible, not to say venal dispositions of the public money, and which only obtain favor by a system of combinations among members interested in similar abuses upon the treasury.
>
> A provision to prevent the legislature's throwing in extraneous items and hoping the executive would connive or ignore them was made by prohibiting Congress from appropriating money "from the treasury unless it be asked for by the President . . . except for . . . its own expenses . . . or settlement of judicial claims.. . . ."
>
> By giving the President the power to veto objectionable items in the appropriation bills, we have, I trust, greatly purified our government, and, at the same time, placed its different parts in nearer

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[4]The exception is North Carolina, hereinafter discussed.

[5]V. L. W., "The Item Veto in the American Constitutional System", Georgetown Law Journal, XXV, (November, 1936), p. 109.

and more harmonious relations.[6]

The provisional constitution of 8 February 1861, provided that "The President may veto any appropriation or appropriations in the same bill". This same provision in slightly altered form was adopted in the permanent constitution of 11 March 1861. Georgia and Texas in 1865 and 1866 respectively included this power in their proposed constitutions under the presidential plan of reconstruction. Subsequently every new state admitted to the Union, and many of the older states by amendment or new constitution granted their governors the power of the item veto.[7]

Before tracing the gradual introduction of the item veto into the several state constitutions, there should be mentioned one further aspect behind the introduction of this executive tool into the Confederate legislative process. This aspect was that the item veto was an integral part of a plan to adapt English budget principles to American conditions in order to secure greater harmony between the executive and the legislature. From the outset the item veto in the Confederate States was directly associated with an executive budget; it was a defense for the President to use against unwarranted or unauthorized legislative increases; and the legislature was specifically enjoined against initiating appropriations, with certain exceptions previously enumerated in Smith's address.[8] The framers of the Constitution

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[6]Robert H. Smith, Address to the Citizens of Alabama on the Constitution and Laws of the Confederate States of America, (Mobile: Mobile Daily Register Print, 1861), pp. 7-11.

[7]Niels H. Debel, The Veto Power of the Governor of Illinois, "University of Illinois Studies in the Social Sciences", Vol. VI, Nos. 1 and 2; (Urbana, Illinois: University of Illinois, 1917), p. 23.

[8]Roger H. Wells, "The Item Veto and State Budget Reform," The American Political Science Review, XVIII, (November, 1924), pp. 782-83.

and more democratic politics.[5]

[illegible] provided [illegible] argued that "the [illegible] any basis of accommodation or compromise is the case [illegible] possible is widely shared [illegible] of it means [illegible]. Society must [illegible] [illegible] have [illegible] [illegible] compromise. Consequently every [illegible] [illegible] the values [illegible] [illegible] [illegible]

of the Confederacy liked what they saw of the English budgetary process, yet would hardly go so far as to depart entirely from the American form of government with its separation of powers in the Montesquieu tradition merely to achieve improvements in the budget process. The introduction of the item veto was a part of their compromise solution. The length of time, and the conditions under which the constitution operated, were of course in no way sufficient to permit an evaluation of the use of the system.

CHAPTER II

INTRODUCTION INTO STATE CONSTITUTIONS

In the decade following the war between the United States and the Confederate States and the rebirth of the Union, state after state introduced the item veto. Georgia and Texas were previously mentioned, although they did not formally have the veto until 1876 and 1877 as a result of problems of reconstruction. In 1872 West Virginia introduced the item veto; in 1873 Pennsylvania; in 1874 Arkansas and New York; so that finally by 1930 there were--and still are today--thirty-nine states with provisions for the item veto in their constitutions.[1] By organic act of Congress, Alaska, Hawaii, Puerto Rico, and (prior to its independence) the Philippines included the item veto in their governors' powers.

Was the idea conceived by the Confederacy so startling and brilliant that no one had ever thought of before, else he would have moved sooner to have it introduced into the legislative process, either for the appropriation bills only or for general legislation? Or was it, essentially, something which would have come anyway in due course, possibly sooner had the war not interfered for a decade? One is inclined toward the latter view, when it is remembered that the Union had only existed for a little over half a century, and that is a short span of time in legislative life. It seems most probable that a necessary step prior to the item veto's introduction was a certain amount of

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[1]For a complete list of states, with dates of introduction of the constitutional provision for the item veto, see Appendix A.

experience without it. One finds such comments as the following by students of the appropriations process in the states:

> The necessity of this [item veto] provision is found in legislative experience. The mutual exchange of courtesies by members of the legislature whereby one agrees to support the appropriations desired by others, in the consideration that others will support those in which he is interested, has led to extravagance and many vicious appropriations.. . . The restrictions contained in this section, it is anticipated, will prevent such practice with distinct benefit resulting to the state.[2]

Other indications are that the item veto was originally conceived more for the purpose of giving the governor power to eliminate unconstitutional, improper, or illegal items than for that of reducing the political machinations of the "pork-barrel" and "log-rolling" legislators. Such reason, at least as far as the appropriations bills went,faded into a secondary significance in comparison to that of reducing unwarranted expenditures. The extravagant habits of legislatures and their failure to assume full responsibility for living within state revenues encouraged, indeed all but demanded the introduction of the item veto.[3]

There is possibly another explanation to the half-century between the beginnings of the states and the introduction of the item veto. In the early days of the Union, emphasis was on the needs of the infant nation, and the great leaders of the day, both state and national, many of whom had been personally through the pangs of birth, were probably more concerned with the problems of the United States than with those of individual states. A few decades

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[2]John A. Perkins, The Role of the Governor in Michigan in the Enactment of Appropriations, (Ann Arbor, Michigan: University of Michigan Press, 1943,) p. 52, quoting Proceedings and Debates of the Constitutional Convention of the State of Michigan, II, 1423.

[3]Ibid. See also Arthur N. Holcombe, State Government in the United States, 3d. ed., rev. & enl. (New York: The MacMillan Company, 1935),pp.360-62.

experience alone it. Dr. Flinn sums comments up the following by [illegible]
the appropriations process in the state:

> The necessity of this [line-item] legislation is found in legis-
> lative experience. The actual existence of constraints by members
> of the legislature whereby one agrees to support the appropriation
> desired by others, in the transformation when others will support
> those in which he is interested, has led to extravagance and many
> without appropriations. . . . The restrictions contained in this
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form of the United States than with those of individual states. A [illegible]

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[1] John A. Fairlie, The [illegible] of the Governor in Michigan in the [illegible] of Appropriations, (Ann Arbor, Michigan: University of Michigan Press, [illegible]), p. 31, quoting Proceedings and Debates of the Constitutional Convention of the State of Michigan, II, [illegible].

[2] Ibid. See also Arthur E. Buck, [illegible] Government in the [illegible] States, rev. ed., rev. & enl. (New York: The Macmillan Company, [illegible]).

later, with the earlier patriots and statesmen faded from the scene, and with the United States firmly on the world stage as a tested and proved independent nation, local and sectional interests became more predominant. Some credence to this argument stems from such statements as that by President Hayes, though he was admittedly discussing a federal, not a state matter, when he wrote:

> The practice of attacking [sic] to appropriation bills measures not pertinent to such bills did not prevail until more than forty years after the adoption of the Constitution.[4]

The form that the constitutional provisions take are almost standard. That for Pennsylvania is quite typical:

> Article IV, Section 16. The Governor shall have the power to disapprove of any item or items of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the Governor's veto.[5]

Wordings for several other states and for the Territories of Alaska, Hawaii, and Puerto Rico are given in Appendix B, together with the sources from which taken. Differences of note can be observed in the case of Washington and also that of Oregon.

> Although nearly all the states feel they have gone far enough with the item veto when the governor is empowered to strike out or reduce parts of an appropriation bill, Washington authorizes him to veto a part of any bill and Oregon to veto items in new bills declaring an emergency.[6]

A significant difference is found in the case of Massachusetts, which in 1918 added provisions for the item veto by amendment, excerpted as follows [italics

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[4]Richardson, op. cit., p. 528.

[5]New York State Constitutional Convention Committee, 1938, Constitutions of the States and the United States, III, (Albany: J. B. Lyon Co., 1938).

[6]Cladius O. Johnson, American State and Local Government, 2d ed. (New York: Thomas Y. Crowell Company, 1956), p. 82.

mine]:

> Amendments. Article LXIII. Section 5. The Governor may disapprove or reduce items or parts of items in any bill appropriating money.[7]

The Committee on State Government of the National Municipal League believes that a state constitution should go as far in strengthening the governor's veto as to insert the item veto and add the authority to reduce as well as eliminate items; that is to say, they favor a type of veto provision similar to that of Massachusetts. Their recommendation as to wording states:

> Article VII. Section 704. The Governor may strike out or reduce items in appropriation bills passed by the legislature, and the procedure in such cases shall be the same as in the case of the disapproval of an entire bill by the governor.[8]

In the discussion of the provision for this power, the League reasons that

> as a safeguard against ill-advised action by the legislature either in changing the general appropriation bill or in passing special appropriation bills, the Governor is given the power to veto, as a whole or in part, items in such bills.[9]

In so stating, the League is hardly as blunt as Robert Smith in referring to such action by the legislature as corrupt, reprehensible, or venal.[10] But the fact that the provision is there is proof enough of their understanding of past performances of (state) legislative bodies.

It was mentioned previously that one state, North Carolina, is the single exception to the fact that each of the United States has some provision

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[7]Commonwealth of Massachusetts, Manual for the General Court, 1955-6, (Boston: Wright & Potter Printing Company, 1955), p. 122. The complete amendment is given in Appendix B.

[8]Committee on State Government, National Municipal League, Model State Constitution, 4th ed. (New York: National Municipal League, 1941), p. 16.

[9]Ibid., p. 45.

[10]Supra, p. 6.

for the executive veto in its constitution. Why, although other states of the colonial period adopted the veto after starting statehood life without it, has North Carolina found it inexpedient or unnecessary? Probably the best single study of the governmental process in that state is found in Robert Rankin's very complete book, in which he observes:

> Where the veto power is used, the basis given for its exercise by chief executives has been on the grounds of public interest and expediency. Why then has North Carolina found it unnecessary to use this instrument, which is gaining in importance in other states? It is indeed difficult to find a satisfactory answer. The control of the state's legislative machinery by the Democratic party makes a veto for purely party reasons unnecessary, and the governor through his message power is able to acquaint the legislature with his legislative desires. This, in most instances, is all that is necessary for the governor to secure his way. If legislation is passed contrary to the wish of the governor, it makes for party harmony, so many say, not to have measures of this type vetoed. This is not a satisfactory explanation but is as logical as any that has been suggested. It is the writer's belief that if a constitutional convention should be called within the near future in North Carolina, the veto power would be given to the governor.[11]

It is therefore essentially a unanimous belief in government at the state level that the item veto for appropriation bills is a necessary and integral part of the budgetary and legislative process. Before passing to a review of the manner in which this type of veto has been used since its inception, it is of interest to note that even in some cases of city government the same belief holds. City government organization is of course vastly different in most respects from that of state government, employing many types and kinds of mayor-council, city manager, and mixed relationships. Yet in 1.5 percent of the cities of population over 10,000 the item veto power over the budget rests

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[11]Robert S. Rankin, The Government and Administration of North Carolina, a volume of American Commonwealths Series, ed. W. Brooke Graves (New York: Thomas Y. Crowell Company, 1955), pp. 88-89.

with the executive.[12]

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[12]William Anderson and Edward W. Weidner, State and Local Government, (New York: Henry Holt and Co., 1951), p. 536. See also, by the same authors, American Government, 4th ed. (New York: Henry Holt and Co., 1953), p. 675.

CHAPTER III

USE BY THE GOVERNOR

With the need for the item veto so strongly indicated--or at least the need for some correction to the administrative process of government with particular regard to the spending of public monies--one might draw the obvious but completely erroneous conclusion that the several governors endowed with this new power sat back with a sigh of relief, and disapproved millions of dollars of waste, whether introduced by misguidance or by corrupt and reprehensible action on the part of the legislature. As a matter of fact, for many years the item veto for appropriation bills lay dormant in just about every state that adopted it, although there were, of course, exceptions. The development of the item veto proceeded at uneven rates of speed and with varying results from state to state. In New York, for example, the item veto was added to the state constitution in 1874, but its first use was by Governor Samuel J. Tilden in 1895.[1] Similarly, in Nebraska, which adopted it in 1875, the first use was in 1895, and during the entire period 1875-1915, the average value of the few applications of the item veto was only $11,100.[2] It seemed almost as if the executive was afraid to flex his muscles lest he cause destruction and chaos in the budgetary process. But the use did develop together with certain

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[1]Alexander, op. cit., p. 197.

[2]Knute E. Carlson, "The Exercise of the Veto Power in Nebraska," Nebraska History and Political Science Series, Bulletin No. 12 (Lincoln, Nebr.: Kline-Smith Publishing Company, 1917), p. 11.

[illegible]

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[illegible]

significant changes in emphasis. The table below shows the extent to which the item veto was applied in two recent years; omission of a state which has the provision in its constitution indicates that for the years indicated the item veto was not used.

EXERCISE OF THE ITEM VETO, 1945 AND 1947[3]

State or Territory	1945 Bills Item Vetoed	1945 Number of Items	1945 Amount in $1000's	1947 Bills	1947 Items	1947 Amounts
Alaska	-	-	-	1	1	80.0
Arizona	-	-	-	1	4	64.1
Arkansas	6	50	465.8	3	9	40.6
California	2	2	6,067.7	8	8	16,010.9
Hawaii	3	96	4,544.7	3	24	2,648.6
Illinois	3	5	622.3	-	-	-
Kansas	1	1	.1	-	-	-
Missouri	2	6	48,315.0(a)	5	45	10,862.8
New Mexico	3	3	62.0	1	7	18.8
New York	-	-	-	1	3	22.5
Pennsylvania	25	33	18,802.2	13	17	7,838.3
S. Carolina	2	5	57.0	1	8	115.3
Texas	-	-	-	2	4	350.8
Washington	6	34	10,322.1	2	22	100.1
Wisconsin	1	1	63.0	1	4	30.0
Wyoming	1	30	109.8	-	-	-
TOTALS	55	266	89,431.7	42	105	38,182.8

(a) Represents a transfer of $48,000,000 to certain funds "vetoed and disallowed". Missouri figures are given for 1945-6 and 1947-8.

Some idea of the relative magnitude of the items vetoed to the total appropriation bill is given by the knowledge that the above figures, except for the $48,000,000 figure for Missouri, represent from one to three percent of the total state budget in most cases. Some states obviously used the method extensively, as in the case of Pennsylvania; others, such as Kansas and Texas,

[3]Frank W. Prescott, "The Executive Veto in American States," The Western Political Science Quarterly, III (March, 1950), pp. 107-108.

State or Territory	Native Born	Number of Slaves	Number in Slave Owners' Families	[illegible]	[illegible]
Alaska	–	–	–	1	1
[illegible]	–	–	–	1	4
Arkansas	1	39	[illegible]	3	0
California	–	3	[illegible]	3	0
Hawaii	3	8	[illegible]	3	21
Illinois	0	2	[illegible]	–	–
Kansas	1	11	[illegible]	–	–
Kentucky	2	0	[illegible]	2	40
New Mexico	1	3	[illegible]	1	1
New York	–	–	–	2	2
Pennsylvania	25	21	[illegible]	11	11
S. Carolina	2	8	[illegible]	1	1
Texas	–	–	–	2	2
Virginia	2	14	[illegible]	2	2
Wisconsin	1	1	[illegible]	1	1
Wyoming	–	–	–	–	–
Total	39	110	[illegible]	40	104

(a) Including a transfer of $40,000,00 to Wells Fargo "Pioneer Express Account". Banking! Ignore for Items 1-4 and 1987-4.

Some loss of its validity magnitude of the Slave Owners of the State of Illinois is given by the [illegible] Illinois, though its [illegible] Illinois for History, represents more the [illegible] local elite Swedish in most cases. Some states obviously [illegible] [illegible] [illegible]

just as obviously use the veto for the purpose originally conceived--that of eliminating a single item or a few items of illegal or unwrranted appropriations.

This shift of emphasis of use from that of merely eliminating particular items for specific reasons to that of using the item veto as a definitely vital part of state budgetary control is interesting and of considerable importance. In some states in particular this action has been true. Pennsylvania, Massachusetts, and California are the prime examples, though other states follow to a lesser degree. These three states even go further by permitting the executive to reduce as well as eliminate items. The Territory of Hawaii also uses the item veto as a tool to achieve economy.[4] This shift, according to Arthur Holcomb,

> resulted from increasing costs of government but mainly from extravagant habits of legislatures and their failure to assume full responsibility for living within revenues. In New York, in 1910, the item veto made thirteen times as many reductions as the upper house over the lower; and in 1914 $7,272,000 or 15% reduction occurred by item veto.[5]

The obvious move then on the part of the legislatures was to try to avoid wholesale use of the item veto by improper itemization. This lump-sum approach to appropriation bills, when used by an irresponsible legislature, put an even further burden on the executive, by combining the good with the bad. In this game of "who is highest on the totem pole", the executives in many states attacked the lump-sum appropriation, when necessary to reduce the budget to within revenue figures, by reducing specific items as well as, or in lieu of, vetoing them completely. The most notable case, that of Pennsylvania, is of

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[4] Ibid.

[5] Holcombe, op. cit., p. 361.

[illegible]

[illegible]

[illegible]

main importance because the attempt succeeded, whereas, by court action in other cases, the attempt failed.

In 1885 the Governor of Pennsylvania first reduced a single item in an appropriation bill without eliminating it. The practice was continued for fifteen years, until in 1901 the matter of constitutionality was tested.[6] The facts of the case were as follows:

> In the general appropriation bill of 1899, there was one item appropriating $11,000,000 to the public schools of the state. The Governor vetoed $1,000,000 of this item and approved the remaining $10,000,000. In sanctioning the reduction, the court was compelled to place a strained interpretation upon the item veto provision in the state constitution. Apparently, the judges feared that a contrary decision would invalidate the entire amount; they were also influenced by the argument from prescription since the practice had been used for 15 years without being challenged in the courts.[7]

Pennsylvania has, accordingly, used the power to reduce as well as to veto items ever since as an integral part of its budgetary process. Other states were not so successful; tests of constitutionality of the power to reduce were made in Texas, Illinois, Arizona, Oklahoma, Montana and Colorado, and the Governor was denied the right to reduce.[8]

It is evident therefore that although the chief executives were slow in most cases to exercise their new prerogative of the item veto in those states adopting it, either from lack of knowledge of just how to apply it or from an understandable hesitancy to use a scalpel that could well turn into a

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[6]Commonwealth v. Barnett, 199 Pa. 161 (1901).

[7]Wells, op. cit., p. 784,n.

[8]Fulmore v. Lane, 104 Texas 499 (1911); Fergus V. Russel, 270 Ill. 304 (1915); Fairfield v. Foster, 25 Ariz. 146 (1923); Publy v. Childers, 95 Okla. 40 (1923); Mills v. Porter, 69 Mont. 325 (1924); Strong v. People, ex rel. Curran, 74 Colo. 283 (1925). For a more complete discussion of this point, and references to additional court cases, see V. L. W., op. cit., pp. 130-33.

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> In the general appropriation bill of 1901, there was one item appropriating $11,000,000 to the public schools of the state. The Governor vetoed $1,000,000 of this item and approved the remaining $10,000,000. In sustaining the Governor, the court was compelled to place a strained interpretation upon the item veto provision in the state constitution. Apparently, the judges feared that a contrary decision would invalidate the entire amount; they were also influenced by the argument from prescription since the practice had been used for 20 years without being challenged in the courts.[1]

Pennsylvania has, accordingly, used the power to reduce as well as to [illegible] items ever since as an integral part of its budgetary process. [illegible] were yet to succeed; tests of constitutionality of the power to [illegible] made in Texas, Illinois, Arizona, Oklahoma, Montana and Colorado, and [illegible] instance was denied the right to reduce.[2]

It is evident therefore that although the item veto [illegible] in most cases in [illegible] that the [illegible] of the item veto in the states adopting it, [illegible] the lack of knowledge of [illegible] to apply [illegible] in an unconstitutional [illegible] in any [illegible] that would [illegible]

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[1]Commonwealth v. Barnett, 199 Pa. 161 (1901).

[2]Wells, op. cit., p. 782n.

[3][illegible] v. Long, 164 Texas 608 (1911); [illegible] v. [illegible], 270 I[illegible] (1911); Fairfield v. Foster, 25 Ariz. 146 (1923); [illegible] v. Childers, [illegible] 48 (1939); Mills v. Porter, 69 Mont. 325 (1924); [illegible] v. People, [illegible] Colo. 74 [illegible] (1924). For a more complete discussion of this [illegible] reference to individual court cases, see [illegible] op. cit., pp. [illegible]

two edged sword in paring appropriations of unwarranted or excess fat, most of them gained confidence after delayed initial attempts of using the item veto. Some tried to extend its power by using it to reduce items; most failed to have this action upheld. As the item veto increased in use and--with the executives at least--popularity, the reasons for its use changed to a marked degree. Probably the peak came in the 1920's; since that time it has been less drastically invoked. It still retains a measure of popularity which Prescott terms "a gun behind the door."[9] But he also observes that

> notwithstanding the attitudes of a few critics, and the advance of more modern devices of fiscal control, the usefulness of the item veto as a reserve weapon is evidenced by the number of proposals which have been made to adopt it in Indiana, New Hampshire, Iowa, Tennessee and Rhode Island.[10]

There are two points worthy of further investigation in Prescott's comment. One is the note of advances in the field of fiscal control, and the other, closely allied to it, is the reference to the item veto as a "reserve weapon." Study of these points properly falls into the subject matter of the following chapter.

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[9]Prescott, op. cit., p. 112.

[10]Ibid., p. 109.

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> [illegible]

[illegible] the following chapter.

[illegible], op. cit., p. [illegible].

Ibid., p. [illegible].

CHAPTER IV

EFFECT OF BUDGET REFORMS

With the rise of supply of government services, with or without demand, in the last half of the nineteenth century and to an even greater extent in the first half of the twentieth century--although admittedly the state governments can hardly compete with the federal government on this score--it became more and more important that the taxpayers' dollars be spent wisely and for the common welfare of all citizens. The item veto came out of a growing realization that some sort of check was needed for an irresponsible--or even a responsible--legislature. In the latter case one might better term it some sort of "adequate fiscal management" than "check", but the basic principle remains the same. To spend dollars wisely and well, correctly and efficiently, a better system than that in use from the inception of the Union became urgently needed. Note of this in the federal budget process was taken by the Taft Commission on Economy and Efficiency in 1912. It is to be regretted that because of political differences there was a delay of nine years before the Budget and Accounting Act of 1921 started a long overdue budget reform for the federal government. The first recommendation of the Taft Commission was for a comprehensive Executive Budget covering both expenditures and revenues, including the consequences of new legislation. This step was the keystone of the budget reform, the sine qua non if any progress at all was to be made in

an increasingly complex problem.[1]

The same thinking existed about this time in the minds of those concerned with state expenditures. The school of budget reformers, beginning particularly in New York about 1915, believed that the item veto and reduction method was a reversal of proper procedure. The method left the legislature sending proposed expenditure authorizations to the executive, rather than vice-versa, for final approval. It was illogical and ineffective as applied to appropriation bills. The item veto could prevent additions to the executive budget, but in those few cases in which such a budget existed, there was normally neglected the prohibition against the legislature's raising the amounts recommended by the executive, so that unless reduction authority was granted him he was powerless to carry out a sound and economical program.[2] When a legislature carried to an extreme the process of adding greatly to the executive's recommended expenditure program, and sent back a budget swollen out of all proportion to the expected revenues, the executive was placed in a position of having an entirely different budget sent to him for approval and, to the extent that his powers of item veto or other authority permitted, modification as required to meet revenue limitations.

There was an additional complication. With few exceptions, and those mostly of a special or emergency nature, appropriation bills were placed on the executive's desk at the very close of session, and the legislature adjourned. There are different provisions in the several states as regards the length of time the executive has to act on bills in such circumstances, before

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[1]Arthur Smithies, The Budgetary Process in the United States, (New York: McGraw-Hill Book Company, Inc., 1951), pp. 68-71.

[2]Alexander, op. cit., p. 216.

an increasingly common practice.[1]

The same trouble existed about this time in the field of fiscal [illegible] control with their expenditures. The example of [illegible] particularly in New York about 1910, [illegible] the [illegible] and [illegible] method was a [illegible] of [illegible] procedure. The [illegible] [illegible] [illegible] sending proposed expenditure estimates to the [illegible], rather [illegible] terms, for final approval. It was illogical and ineffective as [illegible] appropriation bills. The [illegible] could present additions to the [illegible] budget, but in these few cases in which such a [illegible] existed, there [illegible] really logical [illegible] against the legislature's raising the [illegible] recommended by the executive, so that strict [illegible] authority was [illegible] him in the executive to carry out a sound and economical program.[2] [illegible] legislature [illegible] to be allowed [illegible] [illegible] of adding greatly to the [illegible] tive's recommended expenditure program, and each time a budget [illegible] all proportion to the expected revenues, the executive was placed in a [illegible] of having an entirely different budget sent to him for approval and, to [illegible] except that his powers of item veto or other authority permitted, [illegible] as required in most recent legislation.

There was an additional complication. With few exceptions, [illegible] result of a special or emergency nature, appropriation bills were [illegible] the executive's desk at the very close of session, and the legislature [illegible] adjourned. There are different provisions in the several states as regards length of time the executive has to act on bills in such circumstances,

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[1]Arthur Macmahon, [illegible] (New York: McGraw-Hill Book Company, Inc., 1951), pp. [illegible].

[2]Lindeman, op. cit., p. [illegible].

they are automatically dead via the "pocket-veto" method. Usually this time is thirty days, but in some cases it is less. There is hardly time therefore for the executive to act with care and thoroughness in this review. Furthermore, if he did exercise his veto, item or whole, the bill was effectively vetoed absolutely, since the legislature had adjourned, and without a special session there could be no repassage of the bill over the veto. A measure so important as to call for a special session would almost certainly not have been vetoed in the first place, or, if there was any doubt in the matter, wouldhave been presented earlier to guard against such a contingency. The veto in such cases was therefore essentially absolute, without reconsideration or adequate expression of public opinion.

Of course, the executive could take longer than the constitutionally allotted time in his review, and probably all would be well, but all might just as likely not be well and then chaotic conditions could easily result. Such a situation occurred in Connecticut in 1929. The State Supreme Court set aside an act as unconstitutional because the Governor signed it more than three days after its passage, whereas the constitution required that to become law it must be signed within three days. With the stroke of the judicial pen, 1493 Acts were rendered unconstitutional, Acts that had been passed over the four preceding administrations as well as the current one.[3]

Wells opined that the item veto alone is not sufficient. There was needed a complete budget reform, of which the executive budget was a fundamental part, and a prohibition against legislative increases to it also should

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[3]W. Brooke Graves, American State Government, 4th ed. (Boston: D. C. Heath & Co., 1953), p. 281. An excellent review of the budget reforms may be found in Austin F. MacDonald, American State Government and Administration, (New York: Thomas Y. Crowell Company, 1951), pp. 389-98.

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be made a part of the procedure. He did admit that one solution was to adopt the executive budget, not prohibit the legislature's increases, and give the executive the power to reduce items. The step was not objectionable "provided it is made an integral part of an adequate executive budget plan and not, as in Pennsylvania, an isolated and irresponsible instrument of financial control."[4] He considered most important the obvious but normally unobserved requirement of a good budget system that the budget, as passed by the legislature, must be enacted before the end of the session, so that the veto is suspensive, not final, in fact.[5]

The budget reforms introduced into almost every state are logically divided into three groups. The first group, of thirty-one states, undertook reform by legislative action which did not change the constitutional provisions of the item veto, but which could change the actual operation of it. (Louisiana, though its reform was by amendment to the state constitution, belongs in this group.) The second group, Maryland, West Virginia, and Nebraska, made reforms by constitutional amendment which curtailed the item veto provision. The third group, Massachusetts and California, also made constitutional amendments, but enlarged the scope of the item veto.

Of the foregoing, study of the first group shows that the item veto could be affected in two ways. If law requires an executive budget, the Governor is encouraged to use the item veto against legislative additions. For increases he would need power to reduce as well as to eliminate items, which as has been mentioned, may or may not be objectionable depending on how it is

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[4] Wells, op. cit., p. 787.

[5] Ibid.

[illegible], op. cit., p. [illegible].

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applied. The second effect is that the reforms called for an earlier budget, so that the item veto is more suspensive in actual practice, and not absolute by force of circumstances. For example, in New York before the 1916 reform under the budget reorganization act in that state, from 1899 to 1917 there were 121 items vetoed before the legislature adjourned, and 1901 after. In the period of eight years after reform, there were 391 before and only 7 after adjournment. In 1917 in particular, there were 4 items repassed over the Governor's veto, the first time that action had ever taken place in the state's history of the item veto. A corollary advantage to the reform is that the Governor has but ten days to act on a bill during sessions, but thirty days after adjournment, so that earlier budget submission further increases the mere suspensive nature of the item veto.

In the second group of states, Maryland is of chief interest. The 1916 Act in that state has the effect of putting the item veto in the legislature rather than in the executive. The legislature is permitted only to strike out or reduce items in the budget the executive submits. The bill then becomes law without further action by the Governor. Special measures initiated by the legislature are possible, but the Governor has the right to veto them. Since the budget bill is the only one likely to contain itemized appropriations, and since the Governor may not disapprove it in whole or in part (he would hardly want to since he prepared it in the first place),the item veto is essentially obsolete. The contingency is very remote that a special bill would contain more than one item, yet contain only one item in it objectionable to the Governor to the extent that he would want to employ the item veto. If the item veto were not already a part of his powers he would in all probability find no reason to ask for it. A similar situation exists in West Virginia, although

there is the difference that the budget is prepared by the Governor in concert with six elected officers constituting a board for the purpose. Of course, one can conclude that the item veto is still the "gun behind the door" mentioned by Prescott and that as such it is an essential and integral part of the machinery of the budget process. Wells so believes.[6]

Massachusetts and California, in the third group, have a more moderate approach. Massachusetts, by amendment of 1918, assigned the executive the responsibility of submitting the budget. There may be no special appropriation bills until the general bill has passed unless the executive so recommends. The general court has full power to increase, decrease, add, or omit items in the budget, while the executive is authorized to disapprove or reduce items or parts of items in any bill appropriating money. The item veto therefore introduced a budgetary procedure reminiscent of the Confederate system. In practice, during the six years first following the amendment, the executive budget seldom had items increased or added, and it never increased as a whole. The item veto was not often used when items were added by the legislature, though some few cases did arise. Wells states:

> On the whole, the Massachusetts budget system has been a success. The governor has done careful work in revising and reducing the original departmental estimates sent to him. On receiving the budget the general court has carried the reduction process still further so that there was little occasion to use the veto power on the appropriation bills as they were passed by the two houses. Although the estimates submitted are only tentative and might be altered beyond recognition by the legislature, this has not happened, for that body through its committees has handled the budget in an efficient manner. Were this not the case, the governor would probably have made a more extensive use of his veto power than was done.[7]

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[6] Ibid.

[7] Ibid., p. 790.

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Of course, the item veto would have a definite place in such a system were there to develop conflict between the governor and his lawmaking body. Such a conflict did develop in California, the only state which (in 1922) copied the Massachusetts plan. The governor won out, after a hard fight in the lower house, by using and having sustained his veto and reduction of items which had been added by the legislature to the extent that the appropriations exceeded the estimate revenues by some two percent. But this was an unusual case.

From the experience shown by Massachusetts and California, it appears that it is not necessary to limit the legislature's power to the extent that Maryland has done to obtain a good budgetary system. Nor does it appear that the item veto must necessarily be the whiplash that many fear it might be in the hands of some governors. But this matter will be further covered in the following chapter.

CHAPTER V

DISADVANTAGES

The previous chapters have indicated the realization for the need of the item veto in the appropriation bill, the adoption by over three-quarters of the states of the item veto in varying forms, the manner of its use by the states, the attempts, in part successful, of the chief executives to extend the application of the item veto to reductions as well as eliminations, and more recently the partial abnegation of the power by reason of different budgetary procedures than were in use at the time of introduction of the item veto. The picture is seemingly a bright one without a cloud in the sky. But there are drawbacks, as one might well expect. Before closing the study of the item veto as used by the states, it is necessary to inquire further into the disadvantages that arise as well as the advantages.

The original reason for introducing the item veto was to enable the chief executive to remove from a bill embracing many items for which money was appropriated such few as were illegal, or unwarranted, or unduly extravagant, or aided the few at the expense of the many. In theory, the legislatures would continue to perform as before, and those few instances in which disapproval of an item was merited and yet the entire act should not in the public interest be vetoed could be purged by means of the item veto. In fact the result in many cases was that the legislatures shirked their duties even more than before. They looked to the executives to straighten out the legislatures' own mistakes and excesses. If the budgets as enacted into appropriation legislation were

too high and exceeded revenues, let the executives take action to reduce them sufficiently. In 1896 Governor Tilden of New York in his annual message to the state legislature expressed concern at the responsibility which devolved on the governor, and the disposition to hold him to the extreme of accountability in respect to appropriations.[1] Thus "buck-passing" was encouraged. Michigan hardly fared better. John Perkins in his study of appropriation enactment in that state observed:

> this [item veto] arrangement may encourage an extravagant policy on the part of lawmakers and thrusts upon the executive the onerous task of keeping the state solvent or accepting responsibility for the failure to do so.[2]

It is, of course, hindsight to say that such should have been expected to some degree. And yet it is a recognized human tendency to take less pains with a task assigned when one knows it will be reviewed and in all probability modified. In this particular case the reviewer has neither recourse nor redress--if we except appeal to public opinion--against those failing in their duties.

Not only has extravagance on the part of the legislature been introduced, but it has been augmented by a new evil. Legislators have been encouraged

> to please their constituents by voting for appropriations far in excess of anticipated revenues thus forcing the governor to make the inevitable reductions and incur the wrath of the individuals adversely affected.[3]

It is easy to see that if the governor and the legislature are of different

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[1]Alexander, op. cit., p. 197.

[2]Perkins, op. cit., p. 77.

[3]Perkins, op. cit., quoting Austin F. MacDonald, American State Government and Administration, rev. ed. (New York: T. L. Crowell Company, 1940), pp. 209-10. Cf. Clyde F. Snider, American State and Local Government, (New York: Appleton-Century-Crofts, Inc., 1950), p. 231.

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political parties, the latter can put the former in an embarrassingly difficult situation. A tool for administrative efficiency has been twisted and reshaped into a political bludgeon.

The defects and dangers of the item veto do not lie entirely on the side of the legislature. The fact that this power "offers a spearhead of leadership and permits the governor to become a determining force in the process of appropriation"[4] may be a bit too much of a good thing. An unscrupulous executive could easily use the threat of eliminating local projects of interest to those legislators who might be inclined to vote against his programs to force them into line with his wishes. There appears to be a fair balance and division of power between the executive and the legislative branches with the whole veto; the item veto added, even without the power to reduce items, would appear to throw the balance on the side of the executive. To do so is hardly in line with American practice or wishes. Margaret Alexander puts it quite strongly:

> But the power to veto items in appropriation bills . . . has given the state executive an absolute authority in fiscal legislation which is surely subversive of the Anglo-Saxon principle that in the legislature should rest the control of the purse.[5]

Furthermore, as has been pointed out previously, most appropriation bills are placed on the executive's desk at the end of session. With the legislature adjourned, a veto by the executive is in fact absolute, rather than suspensive.[6] Even if the veto of an item of particular interest to a local district or city occurred during the session, it is rather doubtful that the single legislator

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[4] Perkins, op. cit., p. 52.

[5] Alexander, op. cit., p. 198.

[6] M. Nelson McGreary, "The Governor's Veto in Pennsylvania," The American Political Science Review, XLI (October, 1947), p. 946.

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could muster the two-thirds majority to repass an item of but small interest to most of his fellows. It could, in its simplest form, be used to reward or punish members of the legislature through the approval or disapproval of local projects, be they honest or "pork barrel" type.

The use of the item veto in Pennsylvania has been extensive, but not altogether commendatory. "Probably in no state in the Union has the veto been a more effective club in the hands of the governor than in Pennsylvania."[7] The introduction of items for political reasons, the tendency of the legislature to avoid its responsibilities, the effectively absolute veto given the governor by the frequent, even normal practice of depositing the general appropriation bill on the governor's desk at the end of the session, all these defects and others occurred. And the veto, even when it came during the session, so that there was ample time for the legislature to reconsider the bill or item disapproved, was essentially absolute.

> Even though a bill may have originally passed both houses by a unanimous vote--as not infrequently happens--rarely is any effort made to resurrect it. Only once in the period of this study [1939-45] was a motion made to override a veto. The bill, which would have amended the milk control law, had passed the house by a vote of 200 to 0 and the senate by 46 to 2. The governor's veto was sustained in the house, however, by a vote, on the motion to override, of 115 yeas to 75 nays.[8]

It is easy to see that the extension of the veto power to include the item veto, when it is so effective a death-blow to legislation of unanimously agreed merit, can make the governor a political despot. Unfortunately for the story of state government in the United States, that is what has at times occurred. A startling indication of the potency of executive control by use

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[7] Ibid., p. 941.

[8] Ibid., pp. 944-45.

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of the item veto was evidenced by the Pennsylvania biennial appropriation bill of 1941. The house voted 17% less funds for the Department of Commerce than the governor had recommended in his budget. Governor James, Republican, retaliated by reducing the appropriations for both the Department of the Auditor-General and the Treasury to points 17% below his budget suggestions. These were the only two departments headed by Democrats.[9]

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[9] Ibid., p. 946.

PART II

THE ITEM VETO

in the

FEDERAL GOVERNMENT

CHAPTER VI

ATTEMPTS TO INTRODUCE, 1876-1949

Almost since the day the first state introduced the item veto into its constitution there have been moves to do likewise for the federal government. Presidents, senators, representatives and writers in the field of political science have recommended, requested, even pleaded for this extension of the Chief Executive's power. The first congressional attempt to initiate an amendment to the Constitution was made by Mr. Faulkner of West Virginia on 18 January 1876.[1] In nearly every succeeding congress the proposal has been reintroduced in varying forms. At least eighty such amendments were introduced between 1876 and 1936,[2] and a number have been introduced subsequently. They were varied in nature, scope and detail. Some applied to all appropriation bills; some to rivers and harbors only--a point of considerable contention because of the obvious possibilities for "pork barrel" projects and "log-rolling" --some required majority vote of both houses to override; others the usual two-thirds vote.

Whether Representative Faulkner's attempt was prompted by his own ideas on the subject or by the earlier message of President Grant it is difficult to say. The President, in his fifth annual message for the preceding Congress,

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[1]United States, Congressional Record, 44th Congress, 1st Session, 1875, IV, Part 1, 477.

[2]V. L. W., op. cit., p. 111, n., lists numerous references for these attempts.

CHAPTER II

CONGRESS AS INITIATOR, 1789-1798

1 December 1873, suggested two measures for improvements in the Constitution. The first of these was the item veto provision. He suggested that Congress

> authorize the Executive to approve of so much of any measure passing the two Houses of Congress as his judgment may dictate, without approving the whole, the disapproved portion or portions to be subjected to the same rules as now, to wit, to be referred back to the House in which the measure or measures originated, and, if passed by a two-thirds vote of the two Houses, then to become a law without the approval of the President.[3]

As is readily seen, Grant wanted the item veto in its most potent form--not restricted to any type of bill whatsoever, as in the case of Washington State. President Arthur was a little less demanding in the extent of his recommendations. In his second annual message of 4 December 1882, he commented on the advisability of separating items in appropriating bills, as indicated by the nature of certain rivers and harbors bills at the end of the previous sessions which he had allowed to become law without signature, so that the President could have full opportunity of opposing objectionable appropriations "without imperiling the success of others which commended themselves to his judgment."[4] He went on to say:

> It is provided by the Constitution of fourteen of our states that the executive may disapprove any item or items of a bill appropriating money; whereupon the part of the bill approved shall be law, and the part disapproved shall fail to become law, unless repassed according to the provisions prescribed for the passage of bills over the veto of the executive.. . . I commend to your careful consideration the question whether an amendment of the Federal Constitution in the particular indicated would not afford the best remedy for what is often grave embarrassment both to the members of the Congress and to the Executive, and is sometimes a serious public mischief.[5]

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[3] Richardson, op. cit., (p. 5), VII, 242.

[4] Ibid., VIII, 138.

[5] Ibid.

Undoubtedly his ire had been aroused by the appropriation act sent him for signature just a few months earlier. This act, one for rivers and harbors, he vetoed 1 August 1882 and returned it to the Congress with these reasons therefor:

> My principal objection to the bill is that it contains appropriations for purposes not for the common defense or general welfare, and which do not promote commerce among the States. These provisions, on the contrary, are entirely for the benefit of the particular localities in which it is proposed to make the improvements. I regard such appropriation of the public money as beyond the powers given by the Constitution to the Congress and the President.
>
> I feel the more bound to withhold my signature from the bill because of the peculiar evils which manifestly result from this infraction of the Constitution. Appropriations of this nature, to be devoted purely to local objects, tend to an increase in number and in amount. As the citizens of one State find that money, to raise which they in common with the whole country are taxed, is to be expended for local improvements in another State, they demand similar benefits for themselves, and it is not unnatural that they should seek to indemnify themselves for such use of the public funds by securing appropriations for similar improvements in their own neighborhood. Thus as the bill becomes more objectionable it secures more support. This result is invariable and necessarily follows a neglect to observe the constitutional limitations imposed upon the lawmaking power.[6]

It is particularly interesting to note that at no time during the initial attempts to introduce the item veto was the reason given that it could be used to help keep expenditures, or authorizations to make them, within revenues. Indeed, the very same message in which President Arthur asks for the item veto contains a few paragraphs earlier the request for tax reductions to the extent of abolition of all internal revenue taxes except those in liquor, since he believed in the doctrine

> that only such taxes ought to be levied as are necessary for a wise and economical administration of the government. Of late the public

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[6] Ibid., p. 121. Cf. President Hayes' veto message on the Army appropriations bill, 29 April 1879, VII, 528-29; President Cleveland's fourth annual message, 3 December, 1888, VIII, 778; and President Harrison's message of 17 February, 1892, regarding the Indian appropriation bill, IX, 229.

revenues have far exceeded that limit. For the fiscal year ended June 30, 1881, the surplus revenue amounted to $100,000,000.[7]

The Presidents found those willing to listen, and to introduce resolutions in the House or the Senate as the initial step toward effecting an amendment to the Constitution. Mr. Faulkner has already been mentioned as the first, with his introduction of House Joint Resolution 45. Others followed soon thereafter. In the 46th Congress, S.R. 4 and S.R. 21 were introduced; both were adversely reported. One senator did not agree with the report, but nothing further came of the matter.[8] In the 47th Congress occurred the only time in either house that the question of the item veto came to a vote, and then only as a vote on a motion to suspend the rules and discharge the resolution from committee and pass it. This action occurred in 1883. Mr. Flower, proponent of the resolution, made the motion to suspend the rules. His motion failed by five votes to secure the necessary two-thirds majority, by 101 ayes and 58 noes.[9]

The only time the Judiciary Committee of either house reported favorably on a resolution for the item veto occurred in the following Congress. There were three resolutions in the Senate concerned with the matter; S. R. 8 and S. R. 22 were reported by the committee with a request for discharge of further responsibility since S. R. 18 was on the same subject, was favorably reported, and was on the Calendar; hence those two resolutions were indefinitely postponed. S. R. 18 had been introduced by Mr. Lapham of New York on 6 December

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[7] Ibid., VIII, 134.

[8] United States, Congressional Record, 46th Congress, 2nd session, 1879, X, Part 1, 751.

[9] Ibid., 47th Congress, 2nd session, 1883. XIV, Part 3, 2137; Part 4, 3611.

1883, and referred to the Judiciary Committee. It was reported back with amendment on 21 April, 1884. It first came to the floor of the Senate on 9 December, 1884, and was postponed until 17 December, on which latter date it was again postponed until 9 February, 1885, and finally further postponed until 19 February. On 19 February it was not brought to a vote, and nothing further was heard on the matter.[10] The next Congress went back to the usual story--the resolution was reported unfavorably by the Judiciary Committee.[11]

In more recent years the same thing has occurred. In 1936 the late Senator Vandenburg of Michigan introduced Senate Joint Resolution 281 on 3 June before the 74th Congress. Nothing happened other than the usual referral to the Senate Committee on the Judiciary. The Senator was a strong proponent of the item veto for many years,and made several attempts on what might almost be termed his pet project. He appealed to public opinion in an article in The Saturday Evening Post in 1936 in which he made several statements that have by now to readers of this paper a familiar ring:

> The only new authority created would be a negative authority to stop expenditures. . . . It is a change that . . . would increase the efficiency of administration and contribute to the possibility of wiser, safer, and less burdensome government.[12]

The Senator referred to the use of the item veto in thirty-nine of the states and then concluded that

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[10]Ibid., 48th Congr., 1st Session, 1883, XV, Part 1, 48; 1884, XV, Part 4, 3164; Part 5, 4267; 2nd Session, 1884, XVI, Part 1, 104, 304; 1885, XVI, Part 2, 1492; Part 3, 1876.

[11]Ibid., 49th Congr., 1st Session, 1886, XVII, Part 4, 3735. The full report is found in House Report 1879, 49th Congress, 1st Session, quoted infra, p.53.

[12]Arthur H. Vandenburg, U. S. Senator from Michigan, "Hash by the Billion!", Saturday Evening Post, CCIX (29 August,1936), p. 10.

> the national need is the greater in degree because the national appropriations are infinitely larger and more remote from the neighborly disciplines which exist in the lesser governmental units.[13]

He described the times that President Wilson had called Congress' bluff on three separate occasions by vetoing appropriation bills because they contained items to which he strongly objected but which he could not veto without disapproving the entire bills; one of these times was but three days before the end of session. Congress corrected the bills. But certainly there was a risk run that the orderly course of government business would be greatly upset had Congress not amended the bills and had stood adjourned.

Senator Vandenburg believed that the item veto supplemented the executive budget.

> The same sound reasoning which supports an executive budget to curb federal expenditures in advance of congressional appropriations should support the item veto if and when the congressional appropriations subsequently ravish the budget. One supplements the other. Without the item veto the budget may too easily become an impotent wooden gun.[14]

The Senator was not alone in his attempts at that time. Representatives Dirksen (Illinois), Citron (Connecticut) and Luckey (Nebraska) submitted House Joint Resolutions 622, 552 and 623 on 8 June, 30 March and 8 June, 1936, respectively. Senator Vandenburg's and Mr. Dirksen's resolutions called for acceptance or rejection of items in general appropriation bills; Mr. Citron's for distinct items; and Mr. Luckey's for items in any appropriation bill. The last two would also have permitted reduction of items. All died in committee.

Senator Vandenburg made further attempts to introduce the item veto, either by constitutional amendment or by appropriate legislation in each ap-

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[13] Ibid.

[14] Ibid., p. 11.

[1] Ibid.

[2] Ibid., p. 11.

propriation bill. On 10 March, 1942, he stated that two years before he had proposed a constitutional amendment to provide for the item veto for appropriation bills but that his proposal still lay in the Senate Judiciary Committee. He inserted in the record a letter from President Roosevelt which contained the opinion that he, the President, thought that legislation would suffice, and that he would like to see the item veto power rest with the President.[15] Shortly thereafter, however, he withdrew his opinion concerning there being no need for a constitutional amendment. He stated that he had had a very complete legal study made since March and no longer thought that legislation would be a satisfactory and legal manner to introduce the item veto.[16]

Various writers in the political science field have written in favor of the item veto. Perhaps foremost among them is Louis Brownlow in his study of the Presidency. He delivered a series of six lectures at the University of Chicago in 1947, under the sponsorship of the Charles R. Walgreen Foundation; the sixth of these was entitled "What Help Does the President Need From Us?" and contained the following opinion:

> We should today give the President of the United States this same power [as in the Constitution of the Confederate States of America] of veto over specific items in the supply bills. Without this power, the President often feels compelled to sign supply bills despite their freight of obnoxious items and legislative riders rather than risk the stoppage of whole governmental departments for want of funds. Not infrequently the President feels impelled to announce to the public that he has signed an appropriation bill with reluctance because it contained specific items which he deemed bad, but which he could not veto without vetoing the entire measure.
>
> To give the President this power of item veto would not make him a "Dictator." It would help him more faithfully to reflect the will of the people. And, of course, if he misused the power, the item

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[15]United States, Congressional Record, 77th Congress, 2nd session, 1942, LXXXVIII, Part 2, 2153.

[16]Ibid., Part 3, 3670, 3694.

> could be repassed over his objection if it could muster a two-thirds vote in both houses of the Congress, just as if he vetoes an entire bill.
>
> In no fewer than thirty-nine of the forty-eight states of the Union the people have given the Governor of the state this power to veto specific items in appropriation bills. In some of the states this power has been extended so that the Governor may approve, disapprove or modify specific items.[17]

In the last fifteen years the size of the federal budget has grown beyond all belief of those who used as their main argument for the item veto the tremendous, to them then, amounts of government expenditures. If one of the leading arguments for increasing the executive's power to eliminate costly, unneeded items in order to achieve economies was the size of the budget, surely then attempts in the past few years should have had success. The next chapter shows what success.

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[17]Louis Brownlow, The President and the Presidency, (Chicago: The Lakeside Press, 1949), p. 118.

CHAPTER VII

ATTEMPTS TO INTRODUCE 1950-1954

In recent years there have been two attempts to introduce the item veto. One of these was, again, as a resolution in the House to amend the Constitution, although the sponsor also submitted a proposed bill which would by statute accomplish the same end, provided the statute was not considered or found subsequently unconstitutional. The other was as a part of a bill for modifying the budgetary process of the federal government.

On 3 January, 1951, Representative Keating of New York introduced before the House of Representatives, 82nd Congress, 1st Session, a bill and a resolution. The bill, H. R. 492, was referred to the Expenditures Committee and the resolution, H. J. R. 24, to the Judiciary Committee. The latter is not heard of again. But hearings were held on the former by the Committee on Expenditures in Executive Departments, on evaluation of the effect of laws enacted to reorganize the legislative branch of the government. Representative Keating appeared before the Committee 19 June, 1951. In his prepared statement he said:

> Presidents Grant, Hayes, Taft and Roosevelt, and perhaps other Presidents, have requested Congress to empower them to disapprove particular items in appropriation bills without being forced to veto the entire measure and run the risk of depriving a government department of the power to function by withholding funds completely.
>
> When I first advanced the legislative suggestion of permitting the President to veto individual items in an appropriation bill it was in connection with the omnibus approach of providing funds. . . . I concede that the importance of the item veto is much greater in such a case, but this legislation still seems desireable to me if

> we continue to use the present system of separate departmental funds bills. . . . Particularly with regard to bills dealing with public works I feel this approach would be extremely salutory.
>
> The opposition to this legislation may be voiced that it centers too great a power in the President. Any step to enlarge Executive authority is certain to be viewed, and very properly, with some skepticism. . . . Particularly in the field of appropriations the Congress has historically been reluctant to yield any part of its control over governmental operations. . . . Right at this critical moment, it seems to me, the most constructive service we could render would be to adopt every reasonable suggestion advanced to cut down the cost of running the Government.[1]

In additional oral testimony Representative Keating added the following observations and replies to questions put to him:

> Mr. Keating. I am going to assume that we are all sincerely worried about the financial picture and are trying to devise methods of achieving real economy. . . . It may be a little unusual for a Republican Congressman to be suggesting that our present Chief Executive . . . be given every tool that he needs. If we are going to criticize him for spending too much money, then we should give him all the possible tools he could possibly use to cut down on government spending.
>
> Senator Hoey. Congressman, I have the idea that the legislative branch would be rather loath to give the President that power which this bill contemplates. . . . Now, if the President is going to have the right to strike out the one [appropriation] he does not want and take the others, then I think that the legislative body is surrendering a great deal of its privileges and a good deal of its rights. I can see a great many instances and a great many matters where the legislative branch would not want to surrender those rights and have it all supervised by him so that he can pick out what he wanted. Those remarks apply particularly to appropriation bills.
>
> Mr. Keating. You appreciate, Senator, that this is limited to appropriations.
>
> Senator Hoey. Yes, but the Chairman [Senator McClellan] did point out the possibility of having it applied to legislative bills generally.[2]

Here, then, is again the old story--the hopes by the proponent of the item veto that it will serve to eliminate the "pork barrel" to reduce costs of the budget

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[1]United States, Congress, Senate, Committee on Expenditures in Executive Departments, Hearings, Organization and Operation of Congress, 82nd Congress, 1st Session, June, 1951, pp. 358-59.

[2]Ibid., pp. 356-57.

as a whole (Mr. Keating did not propose that the authority to reduce items be given), to remove any possible excuse the President might have that the Congress had put him in a position of being unable properly to discharge his responsibilities; the fears of the opponent that the Chief Executive will extend his power, will take away the rights and privileges of the Congress (it is interesting that Senator Hoey avoids the word "responsibilities"), will acquire overwhelming power. Needless to say, nothing further was heard of Congressman Keating's proposal.

So acted the Senate. Representative Franklin D. Roosevelt, Jr., of New York, had the previous year introduced before the 81st Congress, 2d Session, a bill to supplement the Budget and Accounting Act of 1921 by providing for a balanced budget in an expanding economy, long-range budget estimates, a Presidential item veto, a consolidated cash budget, an investment budget, and a four-year appropriation for major investment programs. This bill was numbered H. R. 8084; it was referred to the House Committee on Expenditures in Executive Departments; and hearings were held 8 and 18 June, 1950. Section 4 of H. R. 8084 stated:

> 4 (a) Every appropriation bill reported to the House of Representatives or the Senate shall contain a section which shall read as follows:
> "When this bill shall have passed the House of Representatives and Senate and shall have been presented to the President for his approval, the President shall have the power to disapprove any item or items contained in this bill, in the same manner and subject to the same limitations as he may, under Article I Section 7 of the Constitution of the United States, disapprove as a whole any bill which shall have been presented to him for his approval. The provisions of Sectim 7 which shall relate to reconsideration shall also apply to any item or items so disapproved to the same extent as they apply to a bill that has been disapproved by the President.
> 4 (b) Subsection (a) is enacted by the Congress as an exercise of the rule-making power of the Senate and House of Representatives, respectively, and as such it shall be considered as a part of the rules of each House, respectively; such rule shall supersede other rules only to the extent that it is inconsistent therewith; and such subsec-

> tion is enacted with full recognition of the constitutional right of either House to change such rule (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.[3]

Mr. Roosevelt's statement at the time of introduction of his bill is worth noting if mainly only to show that the situation hadn't changed much since Mr. Faulkner's day. Mr. Roosevelt said, with regard to the cry for economy and appropriation cuts:

> But suppose you take the trouble to ask the next questions, "Where are the cuts to be made?" and "Who is to do the cutting?" You are then told the cuts are to be made "everywhere" and the "President" is to make the cuts. This is sheer political mumbo-jumbo. Perhaps there are some agencies that are getting more than they need. Any business the size of the Federal establishment has problems of efficient and economic operations. But to talk about using a budgetary guillotine on every agency to the same degree is arrogant nonsense and it is time we said so.
>
> The Appropriation Committees . . . discuss large reductions in broad areas of the budget without at any point naming appropriation accounts which should be reduced or giving specific data as to programs which should be curtailed.
>
> Passing the buck to the President makes no sense since he does not have the power to reduce or eliminate items from the budget. . . .
>
> The purpose of this bill is to begin the remodeling job by eliminating the following defects in the present budgetary practices of the Federal government:
>
> > Third. The insertion of uneconomical or wasteful items in appropriation bills.
>
> The six sections of the bill provide practical remedies for these defects. . . . Third, the President is given the power to veto individual items in appropriation bills.
>
> Incidentally, this power will have to be inserted in each year's appropriation bills. In this connection I was glad to note the day before yesterday that our colleague, the gentleman from New York, [Mr. Keating] introduced a bill to achieve this particular purpose.[4]

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[3]United States, House, Committee on Expenditures in Executive Departments, Hearings on H. R. 8084, entitled "Budgetary Practices Reorganization Act of 1950," 81st Cong., 2d Sess., June, 1950, p. 2. This wording was essentially identical with that of Senator Vandengurg. Cf. U. S., Congressional Record, 77th Congr., 2d Sess., 1942, LXXXVIII, Part 2, 2154.

[4]United States, Congressional Record, 81st Congr., 2d Sess., 1950, XCVI, Part 4, 4926-29. Mr. Keating's bill and resolution H.R. 8008 and H. J. R. 449, are referenced on p. 4720.

Mr. Roosevelt gives as his reasons behind the third item of his bill, the provision for the item veto, the following:

> Section 3 gives the President power to exercise his constitutional power of veto over uneconomical or wasteful items inserted in appropriation bills.
>
> One of the most wasteful practices in the Federal Government is the insertion in appropriation bills of individual items that cannot be justified as legitimately serving the public interest. Sometimes it is done through the most objectionable forms of log rolling. No matter how it is done, it serves to squander priceless resources and give people the unjustifiable impression that members of Congress are more interested in slipping their hands into the pork barrel for local projects than they are in serving the national interests.
>
> The reason that so many of these little items get enacted and the reason they add up to such large totals is that the President is unable to veto individual items in an appropriation bill. He is faced with the choice of either doing nothing about individual items such as these or of vetoing a total measure and thus holding up operations for many other projects and activities that are vitally necessary. He is invariably forced, therefore, to do nothing.
>
> A number of years ago the Senior Senator from Michigan [Mr. Vandenburg] proposed that this problem should be handled by giving item veto powers to the President.
>
> "Now we suddenly confront fabulous appropriation totals"--stated the Senator from Michigan--"it seems more than ever necessary that the Presidential veto should be afforded some degree of that same discretion and selectivity with respect to the component parts of an appropriation bill which Congress itself enjoys when it formulates and passes these bills. . . . The governors of at least 40 out of 48 states have the privileges of the item veto, and I have yet to hear of a single instance in which its use has been contrary to the public interest. . . . I know of no reason why the President of the United States should not have similar opportunity to deal effectively with Federal appropriation bills. . . . Furthermore, an economy minded President may easily be quite helpless in dealing with appropriations if he is confined to a blanket 'yes' or 'no' to the lump sum appropriation totals in the gigantic annual supply bills which now confront the country, and if he is forbidden to send back specific items for congressional review."
>
> Today when the Appropriations Committees in both Houses are planning to bring forth for the first time an omnibus appropriation bill providing for the operations of the entire Government, item veto power by the President becomes indispensable. Without it the multi-billion-dollar omnibus appropriation bill may become a super pork-barrel measure that will frustrate all hopes of governmental economy.[5]

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[5] Ibid.

Representative Roosevelt disposed of the question of whether a statute or an amendment was necessary for the item veto provision by referring to Senator Vandenburg's original thoughts on the question, and President Roosevelt's opinion; he neglected to bring to the attention of the House the Senator's subsequent testimony.[6]

In the Hearings of H. R. 8084 the reaction was immediate and forceful. (Mr. Roosevelt was actually a member of the committee which sat in hearings on his bill.) The opening exchanges follow:

> Mr. Rich. Who wrote this bill?
> Mr. Roosevelt. I wrote the bill.
> Mr. Rich. I do not want any part of legislation of this kind. I think it is about the most ridiculous piece of legislation I have seen come before the House in a long time. . . . It is full of dynamite.
> The Chairman [Mr. Dawson]. I agree with you that it is full of dynamite.
> Mr. Rich. The President would be able to whip into line every Congressman that he wanted to for votes on any particular thing that he would like to have, just to show the individual member of Congress that he can control him. . . . Never was a lash put over Congress like this bill, if it were to be put into legislation.[7]

Mr. Roosevelt documented his presentation well. Letters were presented from the Committee on Economic Development, the Committee of Economic Advisors to the President, the Bureau of the Budget, the Board of Governors of the Federal Reserve System, and others all of whom endorsed the bill favorably, though admittedly they had not very much to say on the subject of the item veto. But numerous letters from various Senators and Representatives who had had experience in their states, many of them as Governors, with the item veto endorsed the item veto favorably. Besides the correspondence on the subject, the com-

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[6] Supra, p. 39, n. 16.

[7] Hearings on H. R. 8084, op. cit.

mittee heard many witnesses, of whom only one spoke against the item veto, although some doubted that Congress would have it. But the bill, which admittedly was almost as radical a change in many fundamentals of the budgetary process as the original act of 1921, died in committee.[8]

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[8] Ibid., pp. 3, 7, 14, 22, 29, 36, 45, 59, 70, 83, 97-106, 107 ff., 121. Of particular interest is the testimony of Dr. George Galloway of the Library of Congress, pp. 59-60; it gives an excellent summary of the pros and cons of all phases of the bill in a most objective fashion.

PART III

SUMMARY

and

CONCLUSIONS

CHAPTER VIII

SUMMARY AND CONCLUSIONS

The proponents of the item veto have spoken strongly for its introduction into the federal government as an additional means for the President to exercise his growing responsibilities with regard to the budget and appropriated monies of the United States for public purposes. They have claimed many advantages for the item veto, and have cited its use in many states of the Union. Their arguments for its use are based essentially on the following accomplishments they believe it offers:

1. Reduce extravagance. It will enable the President to remove from the public monies appropriated for any specific items which in his opinion, as the representative of the people as a whole, are either unwarranted, or profligate or wantonly inconsiderate of the economy of the country.

2. Discourage the "pork-barrel." It will permit the President to eliminate from the appropriation bill single items which are of benefit to the few at the expense of the many, but which the individual congressman would hardly feel it politic to remove from, or fail to add to the appropriations bill in view of his responsibilities to his constituents.

3. Eliminate "log-rolling." The vicious practice whereby one or more congressman agrees to work jointly to further the local interests of each by making appropriated money available for specific projects in their own districts could be stopped by the President without hindrance to the bill as a whole.

4. Restore the veto in fact. Although there was never the intent by the framers of the Constitution of the United States that any one bill would cover more than a single subject or appropriation for more than a single major function; and although there are rules of procedure in both the House of Representatives and the Senate against riders and other manner of combining more than one subject in a bill; there are nonetheless many occasions in which the President finds on his desk for signature a bill of such importance that he cannot fail to sign it, yet finds a completely extraneous and undesirable item attached to it. In theory he has the power of veto; in fact he does not. The item veto would restore his power in fact.

5. Expedite completion of the legislative process. At the present time the President must return to Congress any bill which is vetoed stating his reasons therefor. If the bill is passed over his veto, or if the bill is amended or modified so as to be acceptable to the President, there is a delay to the legislative process which may be of considerable magnitude. In the case of pocket vetoes the delay continues until the next session of Congress. At times desireable legislation may be stopped completely. Were the President to have the item veto power he could put into effect without delay so much of a measure--and this matter is of extreme importance as regards appropriations bills, to which with hardly an exception the proponents of the item veto restrict their recommendations--as seemed to him in the best interests of the people as a whole, and return the remainder for reconsideration.

6. The item veto has worked successfully in many states. The budgetary processes of the state governments are similar to those of the federal government and what works for one would undoubtedly work for the other.

The opponents of the item veto either do not admit to the foregoing

advantages claimed, or admit to them only in part, and state that the disadvantages far outweigh the advantages. They say that though it may have worked well in some states, it has worked poorly, even viciously, in others; and that its defects, which are obvious to anyone who examines the experience of the states' use, will be compounded in the wider field of federal use. Their beliefs may be summarized in the following list of disadvantages:

1. Lessen Congressional responsibility. Congress would be encouraged to "pass the buck", disregarding their constitutionally assigned responsibilities and leaving to the executive branch the problem of living within the country's means, or deciding to resort to deficit financing. Congress would be strongly encouraged to appropriate wildly and irresponsibly and then point to the failure of the executive to take action to reduce expenditures.

2. Increase the influence of the executive. There is a definite fear, similar to that which existed in the early days of the country, that the executive will become too strong, and the country will be led inexorably along the path to dictatorship in fact, regardless of outward democratic appearances. Any furtherance of the executive's power is a step that is taken by the legislature with the greatest of reluctance and strongest of misgivings if it is indeed taken at all. The item veto could be used by an unscrupulous or misguided President to intrench himself in a position of overwhelming power by using it to obtain his way in legislative matters. "To argue that a President would not use such a 'stick' is to ignore the teachings of history".[1]

3. Destroy the system of checks and balances. At times the only way in which the legislature has a countercheck against an obstinate executive who

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[1] V. L. W., op. cit., p. 124.

is blocking the united action of the several representatives of the people is to place the executive in such a position that he cannot fail to approve a measure which includes the item to which he separately objects but which he cannot cut out of the measure and veto individually. To give the President the item veto would destroy this balance.

4. Violate the principle of separation of powers. It would give the executive a legislative function of correcting or "editing" the bills sent to him for signature. Again, although the proponents of the item veto always are careful to mention that it is a power to be given only as regards application to appropriation bills, the opponents are just as careful to point out the defects as applied to all bills; for they are wary of the extension of the power on one pretext or another that the bill is, directly or indirectly, an appropriation bill. There is a further difficulty, referred to in the next paragraph.

5. Uncertain grant of power. The primary difficulty is the matter of definition of an "item". There would almost certainly be a series of court cases arising from instances of application of the item veto in which opponents of the President's action believed that he had exceeded his power by vetoing more than an "item" as they understood the term. Certainly the situation has obtained in the states, and numerous cases of litigation have resulted.[2]

6. Defeat the legislative intent of Congress. It is argued that most particularly in the case of appropriation bills is the intent of Congress one

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[2] V. L. W., op. cit., pp. 130-31, offers an excellent discussion of this point, which is seemingly so simple in theory and yet can be so difficult in actual situations. It is, actually, the major practical difficulty of the item veto, and one which can dispel just about all the advantages claimed for it.

of presenting the bill as a whole, not as a sum of individual parts, any one of which may be incised without regard to the others. The items are interdependent, not mutually exclusive; and if there is to be executive disapproval of an item or items, the bill in its entirety should be (vetoed and) returned to the legislators for revamping as a whole. While this belief may endow Congress with somewhat more credit for careful overall consideration of the budget than actually is warranted, the argument is still a valid one.

7. It is unnecessary. Now that Congress does not have the long adjournment in alternate sessions that used to exist, there would be no extreme delay should the President veto a bill at the end of session or after adjournment. If the matter is one of extreme importance, it is not impractical in modern days of fast transportation and communications for a special session to be convened.

8. It is no guarantee of economy. An economy-minded President would find adequate means using those powers he now possesses to exercise and obtain economy in expenditure of public funds; a spendthrift President would not use it for the purpose of reducing expenditures, and might even use the threat of it against individual congressmen to obtain increased appropriations for his own favored projects.

This summary of objections to the item veto was succinctly put by the Congress:

> These objections to the proposition are fatal to it. They are apparent on the surface of the question; but he knows but little of human affairs and has but little experience of the unseen and invisible consequences of political empiricism, who does not shrink from trying this experiment, which, once adopted cannot be recalled; and the operation of which in the machinery of the government is concealed from our knowledge; especially when the proposition disturbs the balance between the executive and legislative power over money, and vests in the former a controlling authority over the action of the latter,

> unknown in our constitutional history, and dangerous to the equality of right and privilege, of burden and benefit of the members of our Union.[3]

Even a former President had his misgivings on the subject. President Taft states (italics in the quotations below are mine):

> While for some purposes it would be useful for the Executive to have the power of the partial veto, *if we could always be sure of its wise and conscientious exercise*, I am not entirely sure that it would be a *safe* provision. It would greatly enlarge the influence of the President, already large enough from patronage and party loyalty and other causes.[4]

> A rider puts the President in an awkward position. Still, I think the power to veto items in an appropriation bill might give *too much power to the President over congressmen*.[5]

To what conclusions does this study lead us? It would seem that proponents of the item veto raise questions and point out defects which only the item veto can cure. But is this a valid conclusion? Many conclude that it is not, and most careful thinkers will agree with them. To put it simply, two wrongs do not make a right; and improper corrective action for legislative evils will never do else than lead to further evils. Additional reform is urgently needed in the field of public expenditures, including improvements in the budgetary processes both in the legislative and the executive branches of our government. But let us not patch our sails that give power to move the ship of state with rotten cloth, else we shall lose all, and founder. Let us rather see to the whole job of repair to be done, and sail strongly forward on our course.

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[3]United States, House of Representatives, Committee on the Judiciary, *Report on Proposed Constitutional Amendments, House Resolutions 17, 49, 56, 66, and 77*. Report No. 1879, 49th Congress, 1st Session, 1886, p. 3.

[4]William H. Taft, *Our Chief Magistrate and His Powers*, (New York: Columbia University Press, 1916), p. 27.

[5]William H. Taft, *The Presidency*, (New York: Charles Scribners & Sons, 1916), pp. 19-20.

APPENDICES

APPENDIX

APPENDIX A

Citations of State constitutions as regards provision for item veto, and dates introduced therein.

State	Article	Section	Date	State	Article	Section	Date
Alabama	V	126	1901	Montana	VII	13	1889
Arizona	V	7	1910	Nebraska	IV	15	1875
Arkansas	VI	17	1874	New Jersey	V	7	1884
California	IV	16, 34	1879	New Mexico	IV	22	1910
Colorado	IV	12	1876	New York	IV	7	1874
Connecticut	Amendments	XXXVII	1924	North Dakota	III	80	1889
Delaware	III	18	1897	Ohio	II	16	1903
Florida	IV	18	1885	Oklahoma	VI	12	1907
Georgia	V	1.16	1877	Oregon	V	15a	1916
Idaho	IV	11	1889	Pennsylvania	IV	16	1873
Illinois	V	16	1884	S. Carolina	IV	23	1895
Kansas	II	14	1904	S. Dakota	IV	10	1889
Kentucky	-	88	1890	Texas	IV	14	1876
Louisiana	V	16	1898	Utah	VII	8	1895
Maryland	II	17	1891	Virginia	V	76	1902
Massachusetts	Amendments	LXIII,5	1918	Washington	III	12	1889
Michigan	V	37	1908	West Virginia	VII	15	1872
Minnesota	IV	11	1876	Wisconsin	V	10	1930
Mississippi	-	73	1890	Wyoming	IV	9	1889
Missouri	V	13	1875				

Citations of Organic Acts of the Territories.

Alaska	Section 14
Hawaii	Section 49
Philippines	Section 19
Puerto Rico	Section 34

The following states have no provision for the item veto in their constitutions:

Indiana	Nevada	Rhode Island
Iowa	New Hampshire	Tennessee
Maine	North Carolina (no provision for veto of any kind)	Vermont

Note: Dates shown above taken from Carlson, op. cit., Appendix.

Directives of cases concentrations or remove provision for like rate, some large individuals lengths.

Items	Article	Meeting	Data	Item	Section	Section
Alcohol	4	[illegible]	[illegible]	meeting	[illegible]	[illegible]
Article	[illegible]	7	[illegible]	[illegible]	[illegible]	[illegible]
Treasury	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
California	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Delaware	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Commerce/tax	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Virginia	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Georgia	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Idaho-	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Illinois	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Census	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Kentucky	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Louisiana	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Surplus	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Massachusetts	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Alaska	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Hawaii	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nevada	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Wisconsin	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Indiana	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Limits of Oracle Acts of the Corporation.

Alaska	Section 11
Hawaii	Section 24
Public Lot	Section 37
Power Plan	Section 34

The following clause may be required for the item two is their case.

Section	Clause	Clause Letter
Case	Case Employee	Employee
Minor	Work Location (or provision for any	Increase
	at the time)	

Short [illegible] [illegible] [illegible], [illegible] [illegible].

APPENDIX B

Sample provisions for the item veto in the state constitutions and those of the territories.

Alabama, Section 126. The Governor shall have the power to approve or disapprove any item or items of any appropriation bill embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of bills over the executive veto, and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such cases the enrolled bill should not be returned with the Governor's objection.

California, Article IV, Section 16. . . . If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. . . . In such case he shall append to the bill at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the governor's veto, as hereinbefore prescribed.

Georgia, Article V, Section 1, paragraph XVI. . . . He may approve any appropriation, and disapprove any other appropriation, in the same bill, and the latter shall not be effectual unless passed by two-thirds of each House.

Massachusetts, Amendments, Article LXIII, Section 5. The Governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing the same become law. As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reason for such disapproval or reduction, and the procedure shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for disapproval or reduction within five days after the bill shall have been presented to him, such items shall have the force of law unless the general court by adjournment shall prevent such transmission, in which case they shall not be law.

Oregon, Article V, Section 15a. The Governor shall have power to veto single items in appropriation bills and any provisions in new bills declaring an emergency, without thereby affecting any other provision of such bill.

Pennsylvania, Article IV, Section 16. The Governor shall have the power to disapprove of any item or items of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be

the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the governor's veto.

Washington, Article III, Section 12. If any bill presented to the governor contain several sections or items, he may object to one or more sections or items while approving other portions of the bill. In such case he shall append to the bill at the time of signing it, a statement of the section or sections; item or items to which he objects and the reasons therefor and the section or sections, item or items so objected to, shall not take effect unless passed over the Governor's objection, as hereinbefore provided.

West Virginia, Article VII, Section 15. Every bill passed by the legislature, making appropriations of money, embracing distinct items, shall before it becomes a law be presented to the Governor; if he disapproves the bill, or any item or appropriation therein, he shall communicate such disapproval with his reasons therefor to the House in which the bill originated; but all items not disapproved shall have the force and effect of law according to the original provisions of the bill. Any item or items disapproved shall be void, unless repassed by a majority of each House, according to the rules and limitations prescribed in the preceding section in reference to other bills.

Territory of Alaska, Section 14. . . . He [the Governor] may veto any specific item or items in any bill which appropriates money for specific purpose; but shall veto other bills, if at all, only as a whole.

Territory of Hawaii, Section 49, Paragraph 2. Identical to Alaska.

Puerto Rico, Section 34. If any bill presented to the governor contains several items of appropriations of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill.

Except for Massachusetts, the foregoing are taken from either Charles Kettleborough (ed.), The State Constitution, (Indianapolis: B. F. Bowen & Company, 1918),or from the New York State Constitutional Convention, 1938, Constitutions of the States and the United States, III, (Albany: J. B. Lyon Company, 1938). The article for Massachusetts is taken from Commonwealth of Massachusetts, Manual for the General Court, 1955-6, (Boston: Wright & Potter Printing Co., 1955).

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